IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 659 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KOLI LAKHA BABU

Appearance:

1. Criminal Appeal No. 659 of 1990

MR KC SHAH, APP for Petitioner No. 1

MR PM VYAS for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/01/2002

ORAL JUDGEMENT

1. The State of Gujarat having been aggrieved by the judgment and order of acquittal passed by the Ld. Judicial Magistrate First Class, Manavadar, dated

20/3/1990 in Criminal Case No. 224 of 1988 has approached this Court u/S. 378 of the Code of Criminal Procedure (for short 'Cr. P.C.') by filing this appeal.

2. It is the case of the prosecution that respondent at the relevant time i.e. period between 2nd February 1988 and 6th February, 1988 was employed on temporary basis as Muster Clerk. He had during that time, by going against the Government rules, entered names of persons at serial nos. 49 to 63 in the register maintained for the relief work showing that they were genuine persons. The intention behind doing so was to write the names of fictitious persons in register and to collect payment which may be received in their names. Upon a surprise checking this irregularity was found out and it was brought to light that respondent had played mischief with the muster roll and had wrongly entered the names of fictitious persons in the register from serial nos. 49 to 63. In these circumstances, the investigation at the departmental level was carried out and it was found that persons whose names had been mentioned at serial nos. 49 onwards upto 63 in the register were not residing in village Marmath. Even the numbers of the ration cards showed in the muster were not genuine. After recording various statements including the statement of respondent, the matter was referred to the police and after the usual investigation the police submitted chargesheet against the respondent for offence u/S. 477 (A) of the Indian Penal Code (for short 'IPC') in the Court of the concerned Magistrate.

3. At the trial the Ld. Magistrate framed the charge against respondent on 18/11/1988 at Exh. 4 for offence made punishable u/S. 477 (A) of the IPC. The said charge was denied by the respondent and he claimed to be tried.

4. The prosecution in support of its case examined as many as 23 witnesses; and also relied on several documentary evidence to bring home the charge against the respondent. As against that, the respondent has not examined any witness in his defence. At the end of recording of the oral evidence, the statement of respondent u/S. 313 of the Cr.P.C. was recorded. He has denied all the circumstances appearing against him in the evidence. However, he has stated that the muster roll at the relevant time was written by him including the entries from serial nos. 49 to 63. He has further stated that the entries and in particular entries between serial nos. 49 to 63 were written at the instance of one Mr. Dekivadia and Mr. Tarkhala and when later on during

inquiry it was found that these names were fictitious, he had removed their names from muster and he had no intention to misappropriate the wages that may be paid to such employees, who never existed.

5. At the end of the trial the Ld. Magistrate came to the conclusion that the prosecution had not been able to prove that with a view to receive the amount the respondent had tried to derive wrongful benefit and for that purpose respondent had created false accounts. Since in the opinion of the Ld. Magistrate the gist of the offence was not proved by the prosecution, the respondent deserved to be acquitted. He, therefore, vide judgment and order dated 20/3/1990 acquitted the respondent of the offence with which he was charged.

6. The State of Gujarat has, therefore, preferred this appeal u/S. 378 of the Cr.P.C. and at the hearing of the same Mr. K.C. Shah, Ld. APP has taken me through the record of the case to enable me to reappreciate the oral as well as documentary evidence. He has submitted that the judgment and order of the Ld. Magistrate were erroneous because the prosecution had by leading cogent evidence conclusively proved the guilt of the respondent and, therefore, no order of acquittal could be passed. He has drawn my attention, in support of his aforesaid contention, to the evidence of various witnesses and also to the statement of respondent made u/S. 313 of the Cr.P.C. wherein he has admitted the fact that he had written the register and that entries nos. 49 to 63 in the register were made by him. Mr. Shah has also drawn my attention to the reports at Exhs. 21 and 22 which have been duly signed by the respondent and has contended that though the respondent has denied the contents thereof, he has admitted the signatures below it. It may be noted here that according to respondent, his signatures on blank papers had been obtained under duress.

7. Perusing the evidence on record of various witnesses, it clearly appears that false entries have been made in the muster roll on page 18 from serial nos. 49 to 63. Evidence of Budhabhai Bhikhabhai Prajapati P.W. 1 Exh. 6 shows that he was working as T.D.O. in Manavadar Taluka Panchayat during the period between 10th July, 1987 and 30th June, 1988. During that time relief work was going on due to scarcity of water. He has stated that at village Marmath respondent was working as muster Clerk. The duty of this witness was to issue musters and also to appoint payment officers for disbursing the wages to the labourers. He has stated

that between 2nd February 1988 and 6th February 1988 the Deputy Collector, Porbandar had made a surprise checking of the relief work and during his checking he received the reports to the effect that fictitious names were entered into the muster roll with a view to obtain wrongful monetary benefits. He, therefore, directed the Mamlatdar to carry out the detailed inquiry and after complying with the said direction, the Mamlatdar submitted his report on the strength of which complaint against the present respondent came to be lodged. This witness has further stated that the muster roll was in his possession and that the hand writings in the said muster roll were that of respondent. He has further stated that on page 8 at serial no. 18 gang nos. 49, 50, 51, 52, 63, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63 are wrongly shown and the numbers of the ration cards mentioned therein were also false. In the cross-examination he has stated that though the persons who have been named in the register from serial nos. 49 to 63 did not exist in the village, their names had been entered into the register. All these relevant entries had been made by the respondent. He has, however, stated that no amount towards the wages of such persons had been paid to the respondent. He has denied the suggestion made on behalf of the defence that he would not be able to identify the hand writing of the respondent.

7.1. The next witness whose evidence is required to be referred to and discussed here is Hariprasad Jashubhai Vyas, P.W. 3 Exh.20. According to this witness, he was working as Shirastedar in the office of Deputy Collector, Porbandar in February 1988. One Mr.Gera was the Deputy Collector and on 5th February, 1988 he made a surprise checking at the relief work going on at village Marmath. At Marmath the present respondent was the Muster Clerk. When the Deputy Collector visited the site, he was not found there and on inquiry it was learnt that he had gone to the village. He was, therefore, specially called for. The witness has further stated that on checking the muster register it was found that it pertained to gang no. 1 to 63, out of which gang nos. 49 to 63 were not on the site. A detailed inquiry therefore, was ordered to be made, during which the statements of respondent at Exhs. 21 and 22 came to be recorded by this witness. He has further stated that he could identify the hand writings of the respondent. He has further stated that since there was a checking, the respondent had written nil against serial nos. 49 to 63. He has further stated that if no checking would have taken place, the respondent might have received the wrongful payment. In the cross-examination he has stated that they did not

have any prior intimation regarding the irregularities committed by respondent, but this checking was a merely surprise checking. He has denied the suggestion that muster register did not contain the hand writings of respondent. Nothing more of any importance has been elicited during the cross-examination of this witness by the defence.

7.2. The prosecution has also examined some of the persons whose names had been shown in the muster from serial nos. 49 to 63. Govind Vashram P.W. 4 Exh.23, Bhanaji Nanji P.W.5 Exh.24, Narendra Himatlal Modha P.W. 6 Exh. 25 and Raja Gogan P.W. & Exh.27 are some of such witnesses examined by the prosecution to prove that they were not engaged in the relief work nor did they belong to village Marmath and also that they did not hold the ration cards, numbers of which were written in the muster register by the respondent. The cross-examination of these witnesses has not yielded any substance which may favour the respondent.

8. Considering the overall picture of the evidence read together with the further statement u/S. 313 of the accused and also reports Exhs. 21 and 22, it becomes very clear that respondent was responsible for writing false names at serial nos. 49 to 63 on page 18 of the muster register for period between 2nd February 1988 and 6th February 1988 for village Marmath and such false accounts had been created with a view to obtain wrongful monetary benefit. However, because of the surprise checking fortunately, no monetary loss was caused to the Government. However, the act of respondent clearly falls within the ambit of provisions of section 477 (A) of the IPC and in my opinion, the prosecution has conclusively proved that the respondent is liable for committing the said offence. In that view of the matter, the conclusion reached by the Ld. Magistrate is erroneous and it deserves to be disturbed. In other words, the judgment and order of acquittal passed by the Ld. Magistrate in favour of the respondent are required to be quashed and set aside.

9. In the result, the appeal of the State deserves to be accepted and it is hereby allowed. The judgment and order of acquittal passed by the Ld. Judicial Magistrate First Class, Manavadar dated 20/3/1990 in Criminal Case No. 224/1988 are hereby quashed and set aside and the respondent is held guilty of and convicted for committing the offence u/S. 477 (A) of the IPC.

9.1. On the question of sentence Mr. P.M. Vyas, Ld.

counsel for the respondent is heard. He has submitted that since the offence has taken place about 14 years back, sentence of imprisonment may not be imposed upon him.

9.2. Considering the fact that the offence took place way back in February 1988 and that no monetary loss was caused to the Government, no fruitful purpose will be served by sending the respondent to jail. Instead thereof, in my opinion, the ends of justice would meet if a fine of Rs.250/- is imposed on the respondent. The respondent is, therefore, hereby sentenced to pay fine of Rs.250/- within a period of three months from the date of pronouncement of this judgment, failing which he will have to suffer simple imprisonment for 7 (seven) days. Since sentence of only fine is imposed, there is no need to hear the respondent in person on the question of sentence.

This appeal is accordingly allowed.

[AKSHAY H. MEHTA,J.]

* Pansala.